

S  
551.48  
N7Hw  
V.16



**FLOODPLAIN MANAGEMENT SECTION** 444-6646

Volume 16 July 1984

**SHOULD WE GRANT A VARIANCE?**

Any community considering granting a variance from the floodplain management regulations should know the effect such an action may have for the property owners and the local government as well. The procedure for granting a variance is described in the regulations in the "Review Variances—Appeals" section of the model ordinance. The following conditions must be met if permit variances are granted by local government officials for activities not in compliance with the minimum standards of the NFIP and state floodplain management regulations:

1. The proposed activity, if located within a **floodway**, does not increase flood elevations or velocities;
2. There is a showing of good and sufficient cause;
3. Refusal to grant the permit would cause a unique or undue hardship on the applicant or community involved. Such a situation could occur if the requirements cannot be met due to some feature of the property;
4. The granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or nuisances; or if it defrauds or victimizes the public, or conflicts with other existing state or local laws;
5. The site of the proposed activity would be flood-proofed to protect it against flood damage;
6. A reasonable alternative location outside the floodplain is not available for the proposed activity;
7. The variance requested is the minimum necessary to give relief from flooding. The regulations should be adjusted only to the extent needed to perform the activity;
8. Plans and a description of the effects the activity is expected to create must be submitted to the Floodplain Management Section of DNRC for review and approval. This is to ensure that the activity meets all of the above conditions and will not adversely affect other property owners by increasing or diverting flood waters.

If all of the above conditions are met, a permit variance may be granted.

The granting of a variance may create unique situations for the property owner and local community. For example, the issuance of a variance to place a residential structure below the 100-year flood elevation will result in increased premium rates for flood insurance for the structure as high as \$25 for each \$100 of insurance coverage. It also increases the risks to life and property.

In other parts of the country, local communities participating in the NFIP have been suspended from the program by the Federal Emergency Management Agency for issuing unjustified variances. Some property owners have in turn sued the local community for flood damages, claiming the local authorities knew of the flood hazard but granted the variance anyway. Local officials should be especially careful to follow the correct procedure to avoid litigation.

The federal government refuses to pay for flood damages if the local community does not follow its NFIP floodplain management contract. The Federal Insurance Administration within FEMA has recently filed suit against local communities to recover funds received for flood losses and federal disaster assistance. (Such legal action is called subrogation.) Damaged structures in these communities were not constructed in conformance with the floodplain management standards. FEMA is attempting to recover flood loss claims paid and other disaster assistance from the local governments because the NFIP minimum standards were not enforced.

**FLOOD HAZARD MITIGATION AND POST DISASTER FEDERAL ASSISTANCE**

The following information was presented by Mr. Robert Ives of the Disaster Assistance Division of FEMA—Region VIII at the Hazard Mitigation Workshops held at nine locations across Montana in March.

Until recently the federal government has placed most of the emphasis on reducing flood hazards by using structural solutions to flooding problems. The huge expenditures on dams, levees, and similar structures—over \$13 billion in the past 40 years—have not stopped flood losses, which average \$3.8 billion annually, and continue to rise. Flood losses are projected to be \$4.1 to \$4.7 billion annually by 1990.

Several new approaches are now used to reduce flood costs. Some are in the form of new legislation; others are directives from the Office of Management and Budget, executive orders, and regulatory changes. Most of these modifications have resulted in reduced financial assistance to communities and individuals following a presidentially declared disaster.

**PEOPLE LIVING IN FLOOD-PRONE AREAS SHOULD KNOW THAT THESE CHANGES IN GOVERNMENT FUNDING WILL MAKE A SIGNIFICANT DIFFERENCE IN THE AMOUNT OF ASSISTANCE THEY CAN EXPECT FOLLOWING A FLOOD.**

551.48  
N74W  
V.116  
July 1984

newsletter was provided by the Federal Emergency Management Agency. Statements contained in it are the responsibility of the Floodplain Management Section of the Natural Resources and Conservation.

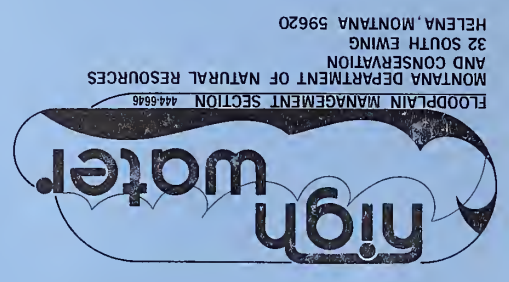
MONTANA STATE LIBRARY  
1515 E. 6th AVE.  
HELENA, MONTANA 59620

JUL 2 6 1984

STATE DOCUMENTS COLLECTION

SHELVED WITH  
PERIODICALS

PLEASE RETURN



July 1984

Volume 16

**PUBLIC ASSISTANCE**—The financial assistance provided to state agencies and local governments for repair or restoration of roads, streets, bridges, and publicly-owned facilities is now cost-shared on a 75%-25% basis. Prior to 1980, the federal government provided 100% of the funding for eligible costs. The state and local government must now provide 25% of the funding. Proposed legislation (S-1525 and HR-3430) would require an insurable publicly-owned structure to have reasonable insurance coverage **prior** to a disaster before it could be eligible for federal financial assistance.

**INDIVIDUAL ASSISTANCE**—Federal assistance has been reduced to individuals, families, and businesses to repair or replace personal property, inventory, and real property. Temporary housing is only provided when the assistance is unavailable from sources such as insurance proceeds.

The Small Business Administration's **Disaster Loan Program** for homeowners and renters has a \$120,000 loan maximum for combined real and personal property losses. Interest rates are 4% for applicants unable to get credit elsewhere and 8% for those that are able to get credit elsewhere. The maximum amount on the Individual and Family Grant Program is \$5,000 and has not been raised since its inception in 1974. The rate of inflation since that time has significantly reduced the effectiveness of these two programs. The **Internal Revenue Service** has recently modified the eligibility criteria for a casualty loss deduction. Instead of a \$100 threshold, the deduction is now only allowed on that part of the uninsured loss in excess of 10% of the adjusted gross income. The federal **assistance available to farmers and ranchers** has seen similar changes. There are generally higher interest rates on loans and cost sharing, and more stringent eligibility criteria for assistance.

In addition, the large federal grant programs from Housing and Urban Development, Community Services Administration, and Economic Development Administration have been significantly reduced or eliminated altogether. Such programs were used in the past by some communities to acquire floodplain property and to flood-proof or relocate flood-prone structures following major disasters. The premiums for flood insurance through the **National Flood Insurance Program** have consistently been raised for structures in high risk areas and coverage has been reduced. The federal government has also recently initiated legal actions against communities that fail to enforce local floodplain ordinances. This is an attempt to recover monies paid out for flood insurance claims and disaster assistance that would not have been required if local floodplain and building codes had been properly administered. At the present time, the federal government has initiated or is actively investigating over

50 such subrogation suits involving community officials, architects and engineers, builders, developers, or other responsible parties.

Recently the federal government has emphasized preparedness and mitigation instead of relying solely on federal financial assistance following a major disaster. State and local hazard mitigation programs must now be reviewed when considering a governor's request for a presidential disaster declaration. Federal disaster assistance may, in fact, be curtailed in situations where hazard mitigation plans have not been implemented properly. Other recent mitigation initiatives require federal agencies to review options and consider alternatives prior to providing federal assistance in any floodplain or wetland. A "NO ACTION" alternative (no federal assistance) is an option if a practical alternative to the proposed action cannot be identified.

One of the more recent (1980) federal initiatives has been the formulation of Interagency Hazard Mitigation Teams that work with the state and local government following a presidential declaration for flood disasters. (Montana was the first state in our region and the third state in the country to have a team activated in May 1981). The purpose of the team is to develop recommendations that will reduce the impact and damages of future flooding events. The team prepares a report containing these recommendations within 15 days of a flood disaster declaration and must stress NON-STRUCTURAL solutions for flooding problems. The team cannot mandate actions by state or local government, and the participation of local government is voluntary.

Using the team concept, many projects have been undertaken nationwide. They have been accomplished at little or no cost to either disaster victims or local governments—major relocation programs involving hundreds of flood-prone structures, acquisition of floodplain property, installation of novel flood and debris control structures, and floodproofing critical facilities (bridges, schools, sewage treatment plants). Many of these projects would have been impossible without the combination of expert knowledge and funding from federal, state, and local governments into a team effort. The proposed legislation previously mentioned may also provide additional funding that will be available to the state and local government to implement mitigation measures that are long-term or cannot be addressed through the team concept.

Floodplain Management Section Staff:  
John Hamill, Supervisor  
Cindy Forgey, Technician/Clerk  
Tim Pool, Coordinator, NFIP